

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-19-0038
RULES 11.5, 26.11, 29.1,)
30.1, 30.2, 39, and 41,) **FILED 07/03/2019**
CRIMINAL PROCEDURE)
)
)
)
_____)

ORDER

**AMENDING RULES 11.5, 26.11, 29.1, 30.2, 39, AND 41, RULES OF CRIMINAL
PROCEDURE, CONCERNING COURT APPOINTED PHYSICIANS TO EVALUATE MEDICATION-
DEPENDENT COMPETENCY**

David K. Byers filed a petition on June 27, 2019 proposing to amend Rules 11.5, 26.11, 29.1, 30.2, 39, and 41, Rules of Criminal Procedure on an emergency basis. Upon consideration,

IT IS ORDERED that Rules 11.5, 26.11, 29.1, 30.2, 39, and 41, Rules of Criminal Procedure be amended on an emergency basis pursuant to Rule 28(G), Rules of the Supreme Court, in accordance with the attachment to this order, effective August 27, 2019.

IT IS FURTHER ORDERED that this matter shall be opened for public comment, in accordance with Rule 28(G)(2), Rules of the Supreme Court. Comments are due October 7, 2019, and any reply due October 18, 2019.

DATED this 3rd day of July, 2019.

_____/s/
JOHN R. LOPEZ IV
Duty Justice

Arizona Supreme Court No. R-19-0038
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TO:
Rule 28 Distribution
David K Byers

ATTACHMENT

Arizona Rules of Criminal Procedure

(deletions shown with ~~strike through~~, new language is underlined)

Rule 11. INCOMPETENCE AND MENTAL EXAMINATIONS

Rule 11.5. Hearing and Orders

(a) and (b) [no changes]

(c) Restoration to Competency: Reports About Treatment.

(1) and (2) [no changes]

(3) *Content of Report.*

(A) Generally. The treatment supervisor's report must include at least the following:

- (i) the treatment supervisor's name;
- (ii) a description of the nature, content, extent, and results of the supervisor's examination of the defendant and any tests the supervisor conducted;
- (iii) the facts on which the treatment supervisor's findings are based; and
- (iv) the treatment supervisor's opinion regarding the defendant's competence to understand the nature of the court proceedings against the defendant and to assist in his or her defense.

(B) If Still Incompetent. If the treatment supervisor finds the defendant is still incompetent, the report also must include:

- (i) the nature of the mental illness, defect, or disability that is the cause of the incompetence;
- (ii) a prognosis regarding the defendant's restoration to competence and an estimate of how long it will take to restore the defendant's competence; and
- (iii) any recommendations for treatment modifications.

(C) If Competent. If the treatment supervisor finds the defendant has regained competence by virtue of ongoing treatment with psychotropic medication, the report also must include any limitations on the defendant's competence caused by medications used in the defendant's treatment, the court may appoint a mental health expert who is a physician to address the necessity of continuing any ongoing treatment with psychotropic medication and any limitations that the medication may have on competency.

(D) [no changes]

Rule 26. JUDGMENT, PRESENTENCE REPORT, PRESENTENCE HEARING, SENTENCE

Rule 26.11. A Court's Duty After Pronouncing Sentence

(a) **Disclosures.** After pronouncing judgment and sentence, the court must:

(1) inform the defendant:

- (A) of the right to appeal the judgment, sentence, or both;
- (B) of the right to seek post-conviction relief;
- (C) that the failure to file a timely notice of appeal or timely notice of post-conviction relief will result in the loss of those rights; ~~and~~

(D) of the right to apply to have the judgment of conviction set aside, except as provided in A.R.S. § ~~13-907(K)~~13-905(K); and
(E) of the right to the restoration of civil rights.

(2) advise that:

(A) if the defendant is indigent, as defined in Rule 6.1(b), the court will appoint counsel to represent the defendant on appeal;

(B) if the defendant is unable to pay for certified copies of the record on appeal and a certified transcript, the county will provide them; and

(3) advise that the defendant may waive the right to appellate counsel by filing a written notice no later than 30 days after filing the notice of appeal.

(b) Written Notice. The court must provide the defendant with a written notice of the rights set forth in (a) and the procedures the defendant must follow to exercise them. The record must show affirmatively the defendant's receipt of the notice.

Rule 29. SETTING ASIDE A CONVICTION

Rule 29.1. Grounds; Notice

(a) Generally. A person who has completed probation or a sentence may apply in writing to the court to set aside a conviction under A.R.S. § ~~13-907~~13-905. The court must provide a person with written notice of this opportunity at the time of sentencing.

(b) Sex Trafficking Victims. Under A.R.S. § ~~13-907.01~~13-909, a sex trafficking victim may apply in writing to the court to vacate the victim's conviction under A.R.S. § 13-3214, or a city or town ordinance that has the same or substantially similar elements, if the offense was committed before July 24, 2014.

COMMENT

Rule 29 implements A.R.S. §§ 13-905 to ~~911~~ and ~~909~~. ~~Rule 29.1 implements A.R.S. § 13-907.~~ Upon conviction of a felony, a person is deprived of rights including the right to vote (Ariz. Const. art. 7, § 2); the right to bear arms if the conviction was for a crime of violence (A.R.S. §§ 13-3101 to -3102); the right to serve on a jury (A.R.S. § 21-201); the right to practice a number of professions and occupations, including law (Ariz. Sup. Ct. Rules ~~51, 52(a), 52(b), and 57(a)~~ ~~(d)~~54(g)), accounting (A.R.S. § 32-741), and beauty culture (A.R.S. § 32-553); and, if a life sentence is imposed, the rights negated by a declaration of civil death (A.R.S. §§ 13-904, 13-4301).

Rule 30. RESTORING CIVIL RIGHTS

Rule 30.1 Grounds; Notice

(a) Automatic Restoration for First Offense. A person who has not previously been convicted of any other felony must automatically be restored any civil rights that were lost or suspended by the conviction, except the right to possess or carry a gun or firearm, if the person:

(1) completes a term of probation or receives an absolute discharge from imprisonment; and

(2) pays any ~~fine or~~ victim restitution imposed.

(b) [no changes]

(c) ~~Gun or Firearm Rights.~~ To restore the right to possess or carry a ~~gun or~~ firearm the person must file an application under Rule 30.2. The following persons may not file to restore the right to possess a ~~gun or~~ firearm:

(1) through (3) [no changes]

Rule 30.2. Application

(a) Persons Entitled to Automatic Restoration. A person who is entitled to automatic restoration of civil rights under Rule 30.1(a) is not required to file an application.

(a)(b) Contents. An application under this rule must include the applicant's name, address, date of birth, and signature, the offenses for which the applicant was convicted, the place and date of conviction, the sentence imposed, the status of victim restitution payment and other court-ordered monetary obligations, and the relief the applicant is requesting. The applicant must attach to the application any documents and affidavits required by law and may attach other supporting documents and affidavits.

(b)(c) Place of Filing and Filing Fee. The applicant must file an application with the court that sentenced the applicant. An applicant who was convicted in a United States District Court may apply for restoration of rights in the superior court in the county where the person now resides. The clerk may not charge a fee for filing an application.

(c)(d) Processing of Application. The court must send a copy of the application to the applicable prosecuting agency no later than 10 days of filing.

(d)(e) Victim Notification. The victim has the right to be present and be heard at any proceeding in which the defendant has filed an application to have civil rights restored. If the victim in a state court matter has requested post-conviction notice, the prosecuting agency must provide the victim with notice of the defendant's application and the rights provided to the victim. The prosecuting agency must provide notice to the victim of the opportunity to be heard if the victim requested post-conviction notification.

Rule 39. VICTIMS' RIGHTS

(a) Definitions and Limitations.

(1) *Criminal Proceeding.* As used in this rule, a "criminal proceeding" is any matter scheduled and held before a trial court, telephonically or in person, at which the defendant has the right to be present, including any post-conviction matter.

(2) *Identifying and Locating Information.* As used in this rule, "identifying and locating information" includes a person's date of birth, social security number, official state or government issued driver license or identification number, the person's address, telephone number, email addresses, and place of employment.

(3) *Limitations.*

(A) Cessation of Victim Status. A victim retains the rights provided in these rules until the rights are no longer enforceable under A.R.S. §§ 13-4402, ~~and 13-4402.01,~~ and 13-4433.

(B) Legal Entities. The victim's rights of any corporation, partnership, association, or other similar legal entity are limited as provided in statute.

(b) through (g) [no changes]

Form 21 Application to Vacate Conviction under A.R.S. § ~~13-907.04~~13-909

_____ Court _____ County, Arizona

APPLICANT (Name/Address/Phone):	CASE NO. _____ APPLICATION	APPLICATION TO VACATE CONVICTION FOR A PRIOR OFFENSE UNDER A.R.S. § 13-907.04<u>13-909</u> AND SUPPORTING DECLARATION
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APPLICANT asks the court to vacate the conviction for the crime of Prostitution, under A.R.S. § 13-3214 or a city or town ordinance that has the same or substantially similar elements as section 13-3214, committed before July 24, 2014. The conviction occurred on _____ in this court. This relief is sought under A.R.S. § ~~13-907.04~~13-909. The law provides that any person so convicted may apply to the sentencing court to vacate the conviction. The applicant is entitled to relief if the applicant can establish by clear and convincing evidence that the applicant's participation in the offense was the direct result of having been a victim of sex trafficking pursuant to A.R.S. § 13-1307.

Explain how you were a victim of sex trafficking and, as a direct result, were convicted of Prostitution:

If additional information is required, you may attach additional pages on lined paper.

I state under penalty of perjury that the information I have provided on this form is true and correct.

Date: _____ Signature _____
Applicant

CERTIFICATE OF MAILING

I CERTIFY that I delivered or mailed a copy of this application to the prosecutor's office that prosecuted the case at the following address: _____

Date: _____ Signature _____
Applicant

FORM 31(a). Application to Set Aside Conviction

_____ Court _____ County, Arizona

STATE OF ARIZONA, Plaintiff -VS- _____ Defendant (FIRST, MI, LAST) _____ Date of Birth Applicant is: <input type="checkbox"/> Defendant <input type="checkbox"/> Attorney for Defendant <input type="checkbox"/> Probation Officer	CASE NUMBER: _____ APPLICATION TO SET ASIDE CONVICTION A.R.S. § 13-907 13-905 Note: Includes application to restore gun and firearm rights pursuant to A.R.S. § 13- 907(J) 13-905(J)
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SECTION I. CONVICTION(S)

A Judgment of Guilt was entered in the _____ Court against me, the defendant, on the _____ day of _____, _____, on the conviction of:

1. Count I: _____
2. Count II: _____
3. Count III: _____
4. Count IV: _____

☐ Additional counts continue on a separate page.

SECTION II. SENTENCE COMPLIANCE

1. I was sentenced to: ☐ a term of probation ☐ the Department of Corrections
2. ☐ I completed the conditions of **probation**. The Probation Department's order discharging me from probation is attached to this application, if available.
3. ☐ I have complied with all required terms of the **sentence** (*including all probation, employment, classes, community service, victim restitution or other court ordered monetary obligations, drug/alcohol testing, or other requirements.*)
4. ☐ I have not complied with all terms of my sentence. Explain:

5. ☐ I received from the Arizona Department of Corrections a Certificate of Absolute Discharge from Imprisonment AND have attached a copy of that Certificate to this application, if available.
6. Have you paid victim restitution in full? ☐ Yes ☐ No

If not, a set aside of judgment of conviction will be denied without a showing of extraordinary circumstances. If you believe you have extraordinary circumstances, explain below. (*Attach documentation you think is relevant for the court's consideration.*)

7. Have you paid all other court-ordered monetary obligations in this case (criminal fines and fees) in full?

☐ Yes ☐ No

If not, please explain:

In some circumstances, you may be eligible to apply to the court to mitigate the amount owed or convert monies owed to community restitution.

SECTION III. PRIOR SET ASIDE(S)

1. Have you previously applied to set aside any conviction? ☐ Yes ☐ No

If so, what was the date of your last application? _____

2. Have you previously been granted a set aside? ☐ Yes ☐ No
3. Have you previously been denied a set aside? ☐ Yes ☐ No

SECTION IV. PENDING CASES AND ACTIVE WARRANTS

1. Are there any open criminal cases against you? ☐ Yes ☐ No
2. Do you have an active warrant? ☐ Yes ☐ No

If yes to either question above, please explain:

SECTION V. OTHER INFORMATION FOR THE COURT

1. Is there anything you would like the court to consider?

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2. ☐ Attach any other information you would like the court to consider.

List attached documents:

-
-
3. The court may decide on this application without a hearing unless a hearing is requested by you, the prosecutor's office, or the victim. (*Check the box below if you are requesting a hearing.*)

Hearing requested? ☐ Yes ☐ No

I understand that this application may be denied if information in this application is found to be inaccurate.

I understand that even if I am granted the right to possess a ~~gun or~~ firearm under Arizona law, it may not give me the right to possess a firearm under federal law.

I declare under penalty of perjury that the information provided in this application and any attachments is true and correct.

Applicant's Name Printed

Applicant's Signature

Address

AUTHORIZATION TO PROCEED ON BEHALF OF DEFENDANT

I authorize _____ ☐ Attorney, or ☐ Probation Officer to
petition the Superior Court in _____ County, to take the above-indicated
action.

Date

Defendant's Signature

Form 31(b) Order Regarding Application to Set Aside Conviction and Restore ~~Gun~~Firearm Rights

_____ Court _____ County, Arizona

STATE OF ARIZONA, Plaintiff -VS- _____ Defendant (FIRST, MI, LAST) _____ Date of Birth	CASE NUMBER: ORDER REGARDING APPLICATION TO SET ASIDE CONVICTION AND RESTORATION OF <u>GUN</u><u>FIREARM</u> RIGHTS A.R.S. § 13-907 §§13-905 & 13-910
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Based upon the information presented to the Court, **THE COURT FINDS THAT:** (only those items marked)

The prosecutor has received a copy of the Application to Set Aside Conviction.

- ☐ The defendant **has met** all statutory requirements for the application; OR
- ☐ The defendant **has not met** all statutory requirements for the application.
- ☐ The defendant was convicted of a criminal offense not eligible to be set aside due to:
 - ☐ a dangerous offense.
 - ☐ an offense for which the person is required or ordered by the court to register pursuant to A.R.S. § 13-3821.
 - ☐ an offense for which there has been a finding of sexual motivation pursuant to A.R.S. § 13-118.
 - ☐ ~~a~~a felony offense in which the victim is a minor under fifteen years of age.
 - ☐ an offense in violation of section 28-3473, any local ordinance relating to stopping, standing, or operation of a vehicle, or title 28, chapter 3, except a violation of section 28-693 or any local ordinance relating to the same subject matter as section 28-693.

IT IS ORDERED:

- ☐ **GRANTING** the application setting aside the judgment of guilt, dismissing the complaint, information, or indictment, and that the applicant be released from all penalties and disabilities resulting from the conviction **except those imposed by:**
 - a. The **Department of Transportation** pursuant to A.R.S. §§ 28-3304, 28-3305, 28-3306, 28-3307, 28-3308, 28-3312, and 28-3319.

b. The **Game and Fish Commission** pursuant to A.R.S. §§ 17-314 or 17-340.

☐ The applicant's right to possess a ~~gun or~~ firearm is also **restored**.
OR

☐ The applicant's right to possess a ~~gun or~~ firearm is **DENIED** due to the applicant's conviction for a serious offense as defined in section 13-706.

☐ **DENYING** the application to set aside conviction for the following reasons:

☐ The defendant **has not met** all statutory requirements for the application.

☐ The defendant was convicted of a criminal offense **not eligible** for a conviction to be set aside.

☐ Other reasons:

_____.

DATED this _____ day of _____, _____.

Judicial Officer

Form 32(a). Application to Restore Civil Rights and ~~Gun~~Firearm Rights

_____ Court _____ County, Arizona

STATE OF ARIZONA Plaintiff -vs- Defendant (FIRST, MI, LAST) Date of Birth Applicant is: <input type="checkbox"/> Defendant <input type="checkbox"/> Attorney for Defendant <input type="checkbox"/> Guardian	[CASE/COMPLAINT NO.] APPLICATION UPON DISCHARGE TO: (check all that apply) <input type="checkbox"/> RESTORE CIVIL RIGHTS <input type="checkbox"/> RESTORE GUNFIREARM RIGHTS A.R.S. §§ 13-905 , 13-906, <u>13-907</u> , 13-908, 13-909 , and 13-910, 13-911 , and 13-912 <input type="checkbox"/> REQUEST FOR RECONSIDERATION (for applications previously denied) <input type="checkbox"/> Civil Rights <input type="checkbox"/> Gun Firearm Rights
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SECTION I. CONVICTION(S)

A Judgment of Guilt was entered against the me, the defendant, on the ___ day of _____, _____,
on the conviction of:

1. Count I: _____
2. Count II: _____
3. Count III: _____
4. Count IV: _____

☐ Additional counts continue on a separate page.

SECTION II. STATE CONVICTION (For federal convictions, see SECTION III.)

☐ A Judgment of Guilt was entered against the me in the Superior Court of Arizona in
_____ County.

1. ☐ The above stated judgment of guilt and conviction for a felony is my first felony conviction in this or any other state and this application is for restoration of right to possess or carry a ~~gun or~~ firearm only.
NOTE: If this is your first felony conviction in this or any other state, any civil rights lost or suspended by the conviction are automatically restored if you completed a term of probation or received an absolute discharge from imprisonment and paid any fine or restitution imposed; however, your right to possess or carry a ~~gun or~~ firearm requires an application under this rule. Refer to **Section VII** of this application.
2. ☐ I completed the conditions of probation. The Probation Department's order discharging me from probation is in the court file or attached to this form.
3. ☐ I received from the Arizona Department of Corrections a Certificate of Absolute Discharge from Imprisonment on a date two (2) or more years before today's date, AND have attached a copy of the Certificate to this petition.
4. ☐ I have complied with all required terms of probation (including all employment, classes, community restitution, victim restitution or other court ordered monetary obligations, drug/alcohol testing, or other requirements.)
5. ☐ I have not complied with all terms of my sentence. Explain:

SECTION III. FEDERAL CONVICTION (for state convictions, see SECTION II.)

☐ A Judgment of Guilt was entered against me in United States District Court for the District of _____ . On the _____ day of _____, _____:

1. ☐ The above stated judgment of guilt and conviction for a felony is my first felony conviction in this or any other state and this application is for restoration of right to possess or carry a ~~gun or~~ firearm only.

NOTE: If this is your first felony conviction in this or any other state, any civil rights lost or suspended by the conviction are automatically restored if you completed a term of probation or received an absolute discharge from imprisonment and paid any fine or restitution imposed; however, your right to possess or carry a ~~gun or~~ firearm requires an application under this rule. Refer to **Section VII** of this application.

2. ☐ I was sentenced to and successfully served a term of federal probation, received an Affidavit of Discharge from the judge who discharged me from probation, **AND** have attached a copy to this petition and have completed the conditions of probation.
3. ☐ I was sentenced to and successfully served a federal prison term and received from the Federal Bureau of Prisons a Certificate of Absolute Discharge, or other official documentation provided by the Bureau of Prisons that indicates successful discharge from Imprisonment on a date two (2) or more years before today's date, **AND** I have attached a copy of the Certificate.
4. ☐ I have complied with all required terms of probation (including all employment, classes, community restitution, victim restitution or other court ordered monetary obligations, drug/alcohol testing, or other requirements.)
5. ☐ I have not complied with all terms of probation. Explain:

SECTION IV. VICTIM RESTITUTION AND COURT ORDERED MONETARY OBLIGATIONS

1. Have you paid victim restitution in full? ☐ Yes ☐ No

If no, a restoration of rights will be denied without a showing of extraordinary circumstances. If you believe you have extraordinary circumstances explain below. (*Attach documentation you think is relevant for the court's consideration.*)

2. Have you paid all other court-ordered monetary obligations in this case (criminal fines and fees) in full? ☐ Yes ☐ No

If no, please explain:

In some circumstances you may be eligible to apply to the court to mitigate the amount owed or convert monies owed to community restitution (State offenses only, not for Federal convictions).

SECTION V. PRIOR RESTORATION OF RIGHTS

1. Have you previously applied to have your rights restored? ☐ Yes ☐ No

If so, what was the date of your last application? _____

2. Have you been granted the restoration of your rights previously? ☐ Yes ☐ No
3. Have you been denied the restoration of your rights previously? ☐ Yes ☐ No

SECTION VI. PENDING CASES AND ACTIVE WARRANTS

1. Are there any open criminal cases against you? ☐ Yes ☐ No
2. Do you have an active warrant? ☐ Yes ☐ No

If yes to either question above, please explain:

SECTION VII. RESTORATION OF FIREARM RIGHTS

NOTE: Arizona Revised Statutes require: If the person was convicted of an offense which would be a dangerous offense under section 13-704, the person may not file for the restoration of the right to possess or carry a ~~gun or~~ firearm. If the person was convicted of an offense which would be a serious offense as defined in section 13-706, the person may not file for the restoration of the right to possess or carry a ~~gun or~~ firearm for **ten years** from the date of the person's absolute discharge from imprisonment or discharge from probation. If the person was convicted of any other felony offense, the person may not file for the restoration of the right to possess or carry a ~~gun or~~ firearm for **two years** from the date of the person's absolute discharge from imprisonment or discharge from probation.

1. ☐ I was convicted of a felony offense **not** listed in A.R.S. §§ 13-704 or 13-706 and it has been **two** years since absolute discharge from imprisonment or probation.
2. ☐ I was convicted of a serious offense as defined in A.R.S. § 13-706 and it has been **ten** years since absolute discharge from imprisonment or probation.
3. ☐ I was convicted of a dangerous offense as defined in A.R.S. § 13-704. (If yes, you are not eligible to file for restoration of the right to possess or carry a ~~gun or~~ firearm.)

If you are requesting that your civil right to possess a ~~gun or~~ firearm be restored, please write your reasons for the request below:

I understand that even if I am granted the right to possess a ~~gun or~~ firearm under Arizona law, it may not give me the right to possess a ~~gun or~~ firearm under federal law.

SECTION VIII. OTHER INFORMATION FOR THE COURT

Is there anything you would like the court to take into consideration?

☐ Attached is other pertinent documentation. List attached documents:

I understand that this application may be denied if information in this application is found to be inaccurate.

Under Oath I swear or affirm, under penalty of perjury, the information provided in this application is to the best of my knowledge true and correct.

Defendant's Name Printed

Defendant's Signature

Address

OR

To the best of my knowledge, the information provided in this application is true and correct.

Attorney's Name Printed

Attorney's Signature

Attorney's Address

AUTHORIZATION TO PROCEED ON BEHALF OF DEFENDANT

I authorize my Attorney, _____ to petition the Superior
Court in _____ County, to take the above-indicated action.

Date

Defendant's Signature

Form 32(b). Order Regarding Application to Restore Civil Rights and ~~Gun~~Firearm Rights

_____ Court _____ County, Arizona

STATE OF ARIZONA, Plaintiff -VS- _____ Defendant (FIRST, MI, LAST) _____ Date of Birth	CASE NUMBER: _____ ORDER REGARDING APPLICATION TO RESTORE CIVIL RIGHTS AND/OR RIGHT TO POSSESS OR OWN A GUN OR FIREARM
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Based on the information presented to the Court, **THE COURT FINDS:** (only those items marked)
The prosecutor has received a copy of the Application to Restore Civil Rights and/or Right to Possess or Own A ~~Gun or~~ Firearm.

- ☐ The Defendant **has met** all of the statutory requirements for the application to restore civil rights and to possess or own a ~~gun or~~ firearm.
- ☐ The Defendant **has not met** all of the statutory requirements for the application to possess or own a ~~gun or~~ firearm including:
- ☐ The Defendant was convicted of a **dangerous** offense as defined in A.R.S. § 13-704.
 - ☐ The Defendant was convicted of a **serious** offense as defined in A.R.S. § 13-706 and **less than ten years** have passed from the date of discharge from probation or prison.
 - ☐ The Defendant was convicted of any other felony offense and **less than two years** have passed from the date of discharge from probation or prison.

IT IS ORDERED:

- ☐ GRANTING the application to restore civil rights **and** right to possess or own a ~~gun or~~ firearm.
- ☐ GRANTING the application to restore civil rights **excluding** the right to possess or own a ~~gun or~~ firearm.
- ☐ GRANTING the application to restore the right to possess or own a ~~gun or~~ firearm.
- ☐ DENYING the application to restore civil rights and right to possess or own a ~~gun or~~ firearm for the following reasons:
- ☐ The applicant **has not met** all statutory requirements for the application (as noted above):
 - ☐ Other reasons:_____.

DATED this _____ day of _____, _____.

Judicial Officer